

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

**HOPE BRANHAM;  
MISSION EVANGELICAL BRANHAM  
CHURCH OF TEXAS,**

**Plaintiffs,**

**v.**

**BANK OF AMERICA, N.A.,**

**Defendant.**

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**Civil Action No. 4:23-cv-00959-O-BP**

**ORDER STRIKING PLAINTIFF'S SECOND AMENDED COMPLAINT AND  
ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made Findings, Conclusions, and a Recommendation ("FCR") in this case. Hope Branham ("Plaintiff") filed an objection to the FCR on June 14, 2024. ECF No. 25. Having reviewed the proposed Findings, Conclusions, and Recommendation de novo, the Court Finds no error, and **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate Judge.

The FCR made three separate recommendations: (1) the Court should grant Defendant's Motion to Dismiss Mission Evangelical Branham Church of Texas ("EBC")'s claims without prejudice; (2) Allow Plaintiff to seek leave to amend her complaint, if Plaintiff shall timely file such motion, the Court should deny Defendant's motion to dismiss Plaintiff's claims as moot; (3) if Plaintiff "does not file a motion seeking leave to file an amended complaint that states a claim for relief within the fourteen days allotted for objections to this Findings, Conclusions, and Recommendation," the Court should dismiss Branham's claims without prejudice. (ECF No. 24 at 5).

Plaintiff does not object to the FCR's first recommendation. Accordingly, EBC's claims are **DISMISSED** without prejudice.

However, Plaintiff did object to the Magistrate Judge's recommendations that her claims be dismissed. Additionally, Plaintiff filed a Second Amended Complaint on June 14, 2024 without seeking leave to do so. Subsequently, on June 28, 2024, Defendant filed a motion to strike Plaintiff's Second Amended Complaint. ECF No. 27. Defendant argues that the Second Amended Complaint should be struck because Plaintiff did not comply with Federal Rule of Civil Procedure 15(a)(1)(B) and amending would be futile. The Court agrees.

First, Plaintiff was not authorized to file her amended complaint. Under Federal Rule of Civil Procedure 15(a)(1) Plaintiff was required to obtain Defendant's written consent, or as instructed by the Magistrate Judge, "file a motion seeking leave to file an amended complaint that states a claim for relief within the fourteen days allotted for objections to this Findings, Conclusions, and Recommendation, or a deadline otherwise set by the Court, Judge O'Connor." ECF No. 24; Fed. R. Civ. P. 15(a)(2). Plaintiff did neither. This alone is a sufficient reason to strike the Second Amended Complaint.

Second, further amendment of Plaintiffs claim would be futile. The Second Amended Complaint only requests that EBC be removed as a plaintiff. ECF No. 26. The Second Amended Complaint does contain a single cause of action against Defendant and does not attempt to address the merits of Defendant's Motion to Dismiss. Thus, even if Plaintiff had sought leave to amend, her motion would be denied because further amendments would be futile. *Avatar Exploration, Inc. v. Chevron, U.S.A., Inc.*, 933 F.2d 314, 321 (5th Cir. 1991) (affirming denial of motion to amend because amendment would be futile).

Accordingly, Defendant's Motion to Strike Plaintiff's Second Amended Complaint is **GRANTED**.

Because the Court found no error in the FCR and Plaintiff's Second Amended Complaint is struck, it is **ORDERED** Defendant's Motion to Dismiss (ECF No. 19) is **GRANTED** as to Plaintiff Hope Branham and Plaintiff Mission Evangelical Branham Church of Texas ("EBC"). Branham's and EBC's claims against Defendant are **DISMISSED without prejudice**.

**SO ORDERED** this 2nd day of July, 2024.

  
Reed O'Connor  
UNITED STATES DISTRICT JUDGE